

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

RODNEY G. SMITH, EXECUTIVE DIRECTOR,
Of the TEAMSTERS UNION 25 HEALTH
SERVICES & INSURANCE PLAN,

Plaintiff,

V.

MARK EQUIPMENT, CORP.,

Defendant,

and

EASTERN BANK,

Trustee.

Civil Action No.

MAGISTRATE JUDGE

RECEIPT #

AMOUNT \$150

SUMMONS ISSUED *yes*

LOCAL RULE 4.1

WAIVER FORM

MCF ISSUED

BY DPTY. CLK.

DATE 1/3/05

COMPLAINT

Introductory Statement

1. This is an action brought on behalf of Teamsters Union 25 Health Services & Insurance Plan (hereinafter, "the Plan") for the collection of an unpaid Judgment for attorneys' fees by means of a post-judgment attachment on trustee process.

Jurisdiction and Venue

2. The jurisdiction of this Court is founded upon § 502(e)(1) of the Employee Retirement Income Security Act of 1974 (hereinafter, "ERISA"), as amended, 29 U.S.C. § 1132(e)(1), which grants the district courts of the United States exclusive jurisdiction of civil actions brought to enforce the terms of an employee benefit plan and/or the provisions of ERISA.
3. Venue is appropriate in this Court under § 502(e)(2) of ERISA, 29 U.S.C. § 1132(e)(2), which provides that an action may be brought in the district where the plan is administered.

Parties

4. Plaintiff Rodney G. Smith is the Executive Director of the Plan and a “fiduciary” within the meaning of § 502(a)(3) of ERISA, 29 U.S.C. § 1132(a)(3). The Plan is a “multi-employer plan” as that term is defined by § 3(37)(A) of ERISA, 29 U.S.C. § 1002(37)(A), and is an “employee benefit plan” or “plan” as that term is defined in § 3(3) of ERISA, 29 U.S.C. § 1002(3). The Plan has its principal office and is administered from 16 Sever Street, Charlestown, Massachusetts.
5. Defendant, Mark Equipment, Corp., is a Massachusetts corporation with a usual place of business at 126 Old Page Street, Stoughton, Massachusetts 02072.
6. Trustee, Eastern Bank, is a company with a usual place of business at 397 Washington Street, Stoughton, Massachusetts 02072.

Allegations of Fact

7. At all times material herein, the Defendant has been obligated to make monthly contributions to the Plan in accordance with the terms of an Agreement and Declaration of Trust executed between the Defendant and the Plan, said contributions to be made on behalf of each employee of the Defendant performing work within the scope of and/or covered by one or more collective bargaining agreements executed by the Defendant and Teamsters Local Union No. 25.

Cause of Action

8. On or about May 28, 1997, the Plaintiff herein recovered a Judgment in his favor against the Defendant in the United States District Court of the District of Massachusetts, Civil Action No. 96-11397-EFH in the amount of \$7,386.79 plus interest. A true copy of this Judgment is attached hereto as Exhibit “A.”

9. On or about October 31, 1997, Plaintiff herein recovered a Judgment in his favor against the Defendant in the United States District Court for the District of Massachusetts, Civil Action No. 97-11292-PBS in the amount of \$4,420.86. A true copy of this Judgment is attached hereto as Exhibit "B."
10. Having paid approximately \$4,324.70 toward both Judgments, the Plaintiff, on February 16, 2000, filed suit in the United States District Court for the District of Massachusetts, Civil Action No. 00-10292-RGS, to recover the unpaid balance of \$8,190.14.
11. The Plaintiff moved pursuant to Rule 64 of the Fed. R. Civ. P. for approval of an attachment on trustee process of the goods, effects and credits of the Defendant in the amount of \$8,190.14. The Plaintiff later moved to amend the amount owed to \$6,671.03.
12. On February 19, 2003, Plaintiff herein recovered a Judgment in his favor against the Defendant in the United States District Court for the District of Massachusetts, Civil Action No. 00-10292-RGS in the amount of \$6,671.03, together with attorneys' fees of \$5,137.50. A true copy of this Judgment is attached hereto as Exhibit "C."
13. On or about February 26, 2003, the then-named-trustee, Rockland Trust Company, remitted a check to the Plan in the amount of \$6,671.03.
14. On March 21, 2003, the Defendant appealed to the United States Court of Appeals for the First Circuit from the final Judgment entered on February 19, 2003. The United States Court of Appeals for the First Circuit assigned the appeal Case No. 03-1416.
15. On or about June 25, 2003, the United States Court of Appeals for the First Circuit dismissed the Defendant's appeal for lack of prosecution and entered Judgment in favor of the Plaintiff.

16. The Defendant has yet to pay to the Plaintiff the attorneys' fees owed the Plan from the February 2003 judgment totaling \$5,137.50.

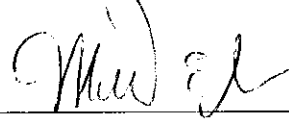
Prayers for Relief

WHEREFORE, the Plaintiff prays that Judgment enter for the following:

- (1) The unpaid portion of the Judgment recovered in Civil Action No. 00-10292-RGS;
- (2) Interest on the unpaid portion of the Judgment;
- (3) An attachment on trustee process as detailed in the Motion filed herewith;
- (4) Attorneys' fees associated with bringing this action; and
- (5) Such other legal or equitable relief that this Court deems appropriate.

For the Plaintiff,
RODNEY G. SMITH,
EXECUTIVE DIRECTOR, TEAMSTERS
UNION 25 HEALTH SERVICES &
INSURANCE PLAN,

By his attorneys,



Matthew E. Dwyer, BBO# 139840
Brian M. Maser, BBO# 655667
Dwyer, Duddy & Facklam, P.C.
One Center Plaza, Suite 360
Boston, MA 02108
(617) 723-9777

Dated: December 28, 2004
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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

RODNEY G. SMITH, EXECUTIVE DIRECTOR OF)
TEAMSTERS UNION 25 HEALTH SERVICES)
AND INSURANCE PLAN,)

Plaintiff)

vs.)

MARK EQUIPMENT CORPORATION)

Defendant)

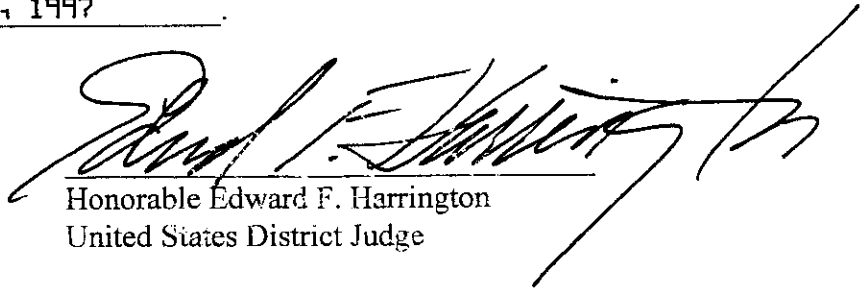
CIVIL ACTION NO.
No. 96-11375-EFH

JUDGMENT BY DEFAULT UPON APPLICATION TO THE COURT

It appears from the motion of John Sheridan, Attorney for the plaintiff, and the affidavit of Rodney G. Smith that the complaint in this action was filed on July 5, 1996; the Notice of Lawsuit and Request for Waiver of Service for Summons was mailed July 12, 1996, and received by the defendant corporation on July 13, 1996; the defendant corporation was served with a summons and complaint on August 26, 1996; default was entered on the civil docket in the office of the clerk of this Court on December 17, 1997. No proceedings have been taken by the defendant since default was entered; and the defendant corporation is not an infant or incompetent.

It is hereby ordered adjudged and decreed that the plaintiff shall have and recover from defendant the sum of \$7,386.79, with interest at the rate of 6.06% percent from the date of this judgment till paid, and that the plaintiff have execution therefor.

Judgment rendered MAY 28, 1997.


Honorable Edward F. Harrington
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

FILED
CLERK'S OFFICE
C. A. NO. 97-11292-PBS
OCT 7 1997

RODNEY G. SMITH, Executive Director
OF TEAMSTERS UNION 25 HEALTH SERVICES
& INSURANCE PLAN,

Plaintiff,

v.

MARK EQUIPMENT CORPORATION,

Defendant

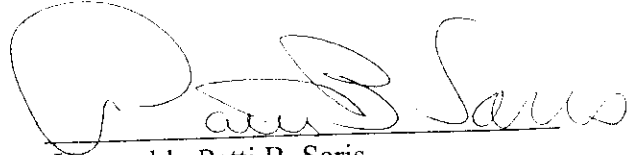
JUDGMENT BY DEFAULT UPON APPLICATION TO THE COURT

It appears from the motion and affidavit of John P. Sheridan, attorney for the plaintiff, that the complaint in this action was filed on June 10, 1997; the Notice of Lawsuit and Request for Waiver of Service for Summons was mailed June 12, 1997, and received by the defendant corporation on June 16, 1997; the defendant corporation was served with a summons and complaint on July 21, 1997; and default was entered on the civil docket in the Office of the Clerk of this Court on September 22, 1997. No proceedings have been taken by the defendant since default was entered; and the defendant corporation is not an infant or incompetent.

It is hereby ordered adjudged and decreed that the plaintiff shall have and recover from the defendant the sum of \$4,420.86, with interest at the rate of ____ percent from the date of this judgment till paid, and that the plaintiff have execution therefor.

9

Judgment rendered 10/31/97.

A handwritten signature in cursive script, appearing to read "Patti B. Saris", written over a horizontal line.

Honorable Patti B. Saris
United States District Judge

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

RODNEY G. SMITH, EXECUTIVE DIRECTOR
of the TEAMSTERS UNION 25 HEALTH SERVICES
AND INSURANCE PLAN,

Plaintiff,

v.

MARK EQUIPMENT, CORP.,

Defendant,

and

ROCKLAND TRUST CO.,

Trustee

CIVIL ACTION
NO. 00-CV-10292-RGS

Judgment

This action came on for consideration by the Court, Stearns, (D.C.J, presiding) on Plaintiff's Motion For Summary Judgment and the issues having been duly considered and said motion having been duly allowed, it is hereby ORDERED:

Judgment for the Plaintiff Rodney G. Smith as against the Defendant Mark Equipment, Corp., in the sum of \$6,671.03, together with attorney's fees of \$5,137.50 pursuant to ERISA § 502(g)(1), 29 U.S.C. § 1132(g)(1).

Dated at Boston, Massachusetts, this 19th day of February, 2003.

By the Court,

Richard D. Stearns

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

1. Title of case (name of first party on each side only) Rodney G. Smith, Executive Director of the Teamsters Union 25 Health Services & Insurance Plan v. Mark Equipment Corp.

2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).

- ☐ I. 160, 410, 470, R.23, REGARDLESS OF NATURE OF SUIT.
- ☒ II. 195, 368, 400, 440, 441-444, 540, 550, 555, 625, 710, 720, 730, 740, 790, 791, 820*, 830*, 840*, 850, 890, 892-894, 895, 950. *Also complete AO 120 or AO 121 for patent, trademark or copyright cases
- ☐ III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.
- ☐ IV. 220, 422, 423, 430, 460, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.
- ☐ V. 150, 152, 153.

3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.

Smith v. Mark Equipment Corp., Civil Action No. 00-CV-10292-RGS

4. Has a prior action between the same parties and based on the same claim ever been filed in this court?

YES ☐ NO ☒

5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)

YES ☐ NO ☒

If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?

YES ☐ NO ☐

6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?

YES ☐ NO ☒

7. Do all of the parties in this action, excluding governmental agencies of the united states and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).

YES ☒ NO ☐

A. If yes, in which division do all of the non-governmental parties reside?

Eastern Division ☒ Central Division ☐ Western Division ☐

B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?

Eastern Division ☐ Central Division ☐ Western Division ☐

8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)

YES ☐ NO ☐

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Matthew E. Dwyer, Esquire, Brian M. Maser, Esquire

ADDRESS Dwyer, Duddy and Facklam, P.C., One Center Plaza, Suite 360, Boston, MA 02108

TELEPHONE NO. (617) 723-9777

JS 44 (Rev. 3/99)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Rodney G. Smith, Executive
Director of the Teamsters Union
25 Health Services & Insurance Plan

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

DEFENDANTS

Mark Equipment Corp.

County of Residence of First Listed _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)

Matthew E. Dwyer, Esquire
Brian M. Maser, Esquire
Dwyer, Duddy and Facklam, P.C.

Attorneys (If Known) UNKNOWN

One Center Plaza, Suite 360
Boston, MA 02113

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☒ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State ☐ 1 ☐ 1 DEF Incorporated or Principal Place of Business in This State ☐ 4 ☐ 4 DEF
Citizen of Another State ☐ 2 ☐ 2 DEF Incorporated and Principal Place of Business in Another State ☐ 5 ☐ 5 DEF
Citizen or Subject of a Foreign Country ☐ 3 ☐ 3 DEF Foreign Nation ☐ 6 ☐ 6 DEF

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General Habeas Corpus <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input checked="" type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIW C/DIW W (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) SOCIAL SECURITY <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609 FEDERAL TAX SUITS
OTHER STATUTES <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions				

V. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify) _____
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

(Cite the U.S. Civil Statute under which you are filing and write brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

Action to recover attorneys' fees awarded from Judgment in
Civil Action No. 00-cv-10292-RGS

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

\$5,137.50

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions)

JUDGE

Stearns, J.

DOCKET NUMBER 00-10292

DATE 1/3/2005 SIGNATURE OF ATTORNEY OF RECORD [Signature]

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING FEE

JUDGE

JAG. JUDGE